

Remarks/Arguments

Claims 1 through 20 are pending in the present application. Claim 15 has been amended for clarity.

Claims 1 through 20 have been rejected. The Office Action asserts that claims 1 through 5, 7 through 12, 15 through 17, and 20 are anticipated by U.S. Design Patent No. D246,704 to Ophir; that claims 1 through 20 are anticipated by U.S. Patent No. 3,488,711 to Wales; and that claims 13 and 14 are unpatentable over Ophir in view of U.S. Patent No. 3,699,971 to Hittel et al.

Independent claim 1 is directed to a fastener for connecting a back panel and a shoulder strap of a brassiere. The fastener includes a first arm for engagement with the shoulder strap, and a second arm for engagement with a portion of the back panel. The second arm is connected to the first arm and at an angle with respect to the first arm. The fastener creates an angle between the shoulder strap and the back panel, biasing the portion of the back panel downward toward a spine of a wearer.

Ophir is a design patent directed to the ornamental design for a heart-shaped fastener. Generally, a utility patent protects the way an article is used and works, while a design patent protects the way an article looks. MPEP 1502.01. Although drawings from a design patent could conceivably be used to anticipate a utility claim, the drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. MPEP 2125. Pictures and drawings must be sufficiently enabling to put the public in the possession of the article pictured; the picture must show all the claimed structural features and how they are put together. MPEP 2121.04. Ophir does not show the structural features of the claimed present invention. For example, Ophir does not reasonably disclose or suggest a fastener for connecting a shoulder strap and a back panel at an angle with respect to one another.

Ophir also does not anticipate claim 1 because Ophir does not show a back panel or a shoulder strap as claimed in claim 1. The Office Action states that “the intended use recitation has not been given patentable weight since the claimed structure does not distinguish the claimed invention over the prior art fastener satisfying the same structural limitations.” The shoulder strap and back panel of claim 1 are an integral part of the claimed structure, not merely part of an intended use recitation. As a result, these elements should be given patentable weight. The Office Action also asserts that applicants “do not claim the bra structure with the strap attached to the bra back panel on an angle or in a biased position.” The language found in claim 1 contradicts this assertion. Claim 1 recites a “fastener connecting a back panel and a shoulder strap” where the “fastener creates an angle between said shoulder strap and said back panel and biases said portion of said back panel downward toward a spine of a wearer.” Clearly, Ophir does not show all the structural features of the current invention, nor does it show how they are put together. As a result, Ophir clearly does not anticipate claim 1.

Claims 2 and 3 are dependent on claim 1 and are not anticipated by Ophir for the reasons outlined above with respect to claim 1.

Dependent Claim 4 recites the fastener of claim 1, with a wave portion of claim 2 having a flange. Claim 4 is not anticipated by Ophir for the reasons stated above with respect to claim 1. In addition, Ophir does not anticipate claim 4 because Ophir does not show a flange. The Office Action asserts that the “flange” in Ophir is the same as the flange recited in claim 4. However, the Ophir patent shows only a tip or point on the interior of an ornamental heart-shaped design. Words in a claim are to be given their plain meaning unless they are defined in the specification. MPEP 2111.01. A flange is defined as “a rib or rim for strength, for guiding, or for attachment to another object” (Merriam-Webster Online Dictionary). This definition is consistent with the usage of the word

“flange” in the specification; the flange is used to guide and attach the back panel to the shoulder strap. A flange is more than the small tip that is shown in Ophir. The Office Action indicates that “[t]he flange of Ophir is seen in the center of the upper edge portion of the fastener.” Even when the word “flange” is given its broadest interpretation, it does not include the structure shown in Ophir. Thus, claim 4 is patentable over Ophir.

Claims 5 and 7 depend from dependent claim 4, and are also not anticipated by Ophir for the reasons presented above with respect to claim 1 and claim 4.

Claims 8 through 12 depend from claim 1, and are not anticipated by Ophir for the same reasons that claim 1 is not anticipated by Ophir.

Independent claim 15 is directed to a fastener for connecting a back panel and a shoulder strap of a brassiere having a first arm for engagement with the shoulder strap. The first arm has a first end and a second end. The fastener has a second arm for engagement with the back panel and the second arm has a first end and a second end. The first end of the second arm is connected to the first end of the first arm to form a plane and the second end of the second arm forms an angle with respect to the second end of the first arm. The fastener has a wave portion. The fastener biases a portion of the back panel and the shoulder strap towards each other.

Ophir does not disclose or suggest the invention claimed in claim 15. To anticipate a claim, the reference must teach every element of the claim. MPEP 2131. The Office Action states that “[w]hen used in a brassiere as a shoulder strap fastener the Ophir fastener functions as claimed and as outlined in the intended use recitation.” Claim 15 includes a back panel and a shoulder strap. These elements are integral structural components of the claimed invention, not merely part of an “intended use recitation.” Additionally, because a design patent

protects only the ornamental aspects of a structure, and not its functional aspects, speculation as to how the design would function is improper.

The drawing in a design patent constitutes the entire visual disclosure of the claim, and for this reason it is extremely important that the drawing or photograph be clear and complete, and that “nothing regarding the design sought to be patented is left to conjecture.” MPEP 1503.02. Ophir does not disclose every element of claim 15; a back panel and shoulder strap are not even depicted. A design patent cannot be prior art based solely on conjecture as to how the design would function. Since Ophir does not disclose how to make or use the invention as claimed in claim 15, claim 15 is clearly patentable over Ophir.

Claims 16, 17, and 20 depend from claim 15, and are not anticipated by Ophir for the reasons stated above concerning claim 15. In addition, claims 16 and 17 are patentable over Ophir for the reasons stated previously with regard to claim 4. Ophir does not show a flange, which is an additional structural feature recited in claims 16 and 17. Again, even when the word “flange” is given its broadest interpretation, it does not include the structure shown in Ophir. Claims 16 and 17 are patentable over Ophir.

The Office Action asserts that claims 1 through 20 are anticipated by Wales. This assertion is based solely on the drawings found in Wales, particularly Figure 8. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. MPEP 2131. Since the drawings in Wales clearly do not describe every element found in the claims of the present invention, the present invention is not anticipated by Wales.

Drawings and pictures can anticipate claims if they clearly show the structure claimed. However, the drawings must show all the claimed structural

features and how they are put together. MPEP 2125. The drawings cited by the Office Action do not disclose or suggest the present invention of claims 1 through 20. Thus, the present invention is patentable over Wales.

Claim 1 is not anticipated by Wales because Wales does not disclose or suggest a back panel or a shoulder strap as claimed in Claim 1. The Office Action states that “the intended use recitations have not been given patentable weight since they do not further distinguish the structure of the inventive fastener over the prior art fastener satisfying the same structural limitations.” Again, the shoulder strap and back panel of claim 1 are an integral part of the claimed structure, not merely part of intended use recitations. As a consequence, the recitation of the shoulder strap and back panel should be given patentable weight. These structures are not shown in Figure 8 of Wales, and so Wales does not disclose claim 1.

Dependent claims 2 through 4, 8 through 10, 13, and 14 depend from claim 1, and are also not anticipated by Wales for the reasons outlined above in reference to claim 1.

Claim 5 depends from dependent claim 4, and recites a flange with a pair of tapered sides. Wales does not anticipate claim 5 for the reasons presented above in regard to claim 1. Additionally, Wales does not anticipate claim 5 because it does not show a flange with tapered sides. Figure 8 of Wales shows what could arguably be interpreted as a flange. However, this flange does not have tapered sides. Instead, the sides of the flange in Figure 8 of Wales are rounded with a small protuberance. Figure 8 of Wales does not contain all of the limitations in claim 5 of the present disclosure. Accordingly, claim 5 is patentable over Wales.

Claim 6 depends from dependent claim 5, and recites a pair of tapered sides on a flange that are parallel to a first and a second arm. Wales does not

anticipate claim 6 for the reasons outlined above regarding claims 1 and 5. Additionally, Wales does not anticipate claim 6 because it fails to disclose a flange with sides parallel to the first and second arms. The Office Action asserts that in Figure 8 of Wales, “[t]he pair of tapered sides are parallel as claimed.” However, the language in claim 6 makes it clear that the tapered sides are “parallel to said first arm and said second arm,” not merely parallel to each other. Figure 8 of Wales does not disclose a flange with tapered sides parallel to a first arm and a second arm. Accordingly, claim 6 is patentable over Wales.

Claim 7 depends from dependent claim 4, and provides that the first arm, the second arm, and the wave portion form a heart shape. Wales does not anticipate claim 7 for the reasons presented above regarding claim 1. Additionally, Wales does not anticipate claim 7 because the Wales fastener does not form a heart shape. The Office Action indicates that “[a]pplicant has not defined the heart shape as being of a human body heart shape or a ‘commercial heart shape’.” The words in a claim should be given “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art.” MPEP 2111. One of ordinary skill in the art would understand “heart shape” to mean what the Office Action refers to as a “commercial heart shape,” that is, a generally ovate figure with a sinus and two rounded lobes. The Wales connector does not form a heart shape, either “commercial” or otherwise; claim 7 is patentable over Wales.

Claims 11 and 12 depend from dependent claim 1, and are patentable over Wales for the same reasons presented in reference to claim 1. In addition, claims 11 and 12 are patentable over Wales because Figure 8 of Wales does not disclose the claimed ranges of the angle created between the shoulder strap and back panel. The Office Action states that “[t]he angles created by the first and second arms appear to be in the claimed ranges as seen in figure 8.” However, when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are

of little value. MPEP 2125. The description of the invention found in Wales does not disclose that the drawings are to scale, and does not disclose a preferred angle, or any angle at all. A mere guess as to what the measurements of the angle appear to be in Figure 8 of Wales is insufficient to anticipate claims 11 and 12.

Claim 15 is directed to, among other things, a fastener for connecting a back panel and a shoulder strap of a brassiere having a first arm for engagement with the shoulder strap and a second arm for engagement with the back panel. Claim 15 is patentable over Wales because Wales does not disclose or suggest a back panel or a shoulder strap as claimed in claim 15. Again, the Office Action states that “the intended use recitations have not been given patentable weight since they do not further distinguish the structure of the inventive fastener over the prior art fastener satisfying the same structural limitations.” Again, the shoulder strap and back panel of claim 1 are an integral part of the claimed structure, not merely part of intended use recitations. As a consequence, the recitation of the shoulder strap and back panel should be given patentable weight. These structures are not disclosed in Wales, and so Wales does not anticipate claim 15.

Claim 16 depends from independent claim 15. Claim 16 is patentable over Wales for the same reason that claim 15 is patentable over Wales.

Claim 17 depends from dependent claim 15, and recites a flange with a pair of tapered sides. Wales does not anticipate claim 17 for the reasons presented above in regard to claim 15. Additionally, claim 17 is patentable over Wales because Wales does not show a flange with tapered sides, an element present in claim 17.

Claim 18 depends from dependent claim 17, and recites a pair of tapered sides on a flange that are parallel to a first and a second arm. Wales does not

anticipate claim 18 for the reasons outlined above regarding claim 17 and claim 15. Additionally, Wales does not anticipate claim 18 because it fails to disclose a pair of tapered sides on a flange that are parallel to a first and a second arm.

Claim 19 depends from independent claim 15 and provides that one of the first and second arms is angled with respect to the plane, while the other of the first and second arms is parallel to the plane. The Office Action references Figure 6 of Wales as showing such a configuration. Figure 6 only shows one arm, not a first and second arm as recited in claim 19. Accordingly, claim 19 is patentable over Wales.

Claim 20 depends from independent claim 15, and is patentable over Wales for the same reasons presented in reference to claim 15. Additionally, claim 20 is patentable over Wales because Wales does not disclose the preferred ranges of the angle created between the shoulder strap and the back panel, as recited in claim 20. The Office Action asserts that Figure 8 of Wales appears to show one of the preferred angles. The description of the invention found in Wales does not disclose that the drawings are to scale, and does not disclose a preferred angle, or any angle at all. Conjecture as to what a drawing shows when the drawing is not to scale is insufficient to anticipate a claim. Accordingly, claim 20 is patentable over Wales.

The Office Action asserts that claims 13 and 14 are unpatentable considering Ophir in view of Hittel.

Claim 13 depends from independent claim 1, and recites that the fastener of claim 1 has the shoulder strap and back panel biased toward each other.

Claim 14 also depends on independent claim 1, and recites that the fastener of claim 1 has the shoulder strap and back panel biased away from each other.

A prima facie case for obviousness of claims 13 and 14 has not been established. To establish a prima facie case of obviousness, three basic criteria must be met: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; 2) there must be a reasonable expectation of success; and 3) the prior art references when combined, must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP 2143. Thus, a prima facie case of obviousness regarding the present invention has not been met.

First, there is no motivation to combine Ophir with Hittel. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. There is no explicit or implicit teaching in either Ophir or Hittel that would suggest combining the two patents. Ophir is a design patent, concerned with the ornamental design of a fastener. If an attempt were made to use the Ophir fastener in the manner outlined in the present disclosure, the fastener would be completely obscured from view, negating the need for a design patent. In other words, there is a motivation *not* to combine the references.

Hittel is directed toward a brassiere providing support and self-adjustment having fastener clasps. The fastener clasps in Hittel are rectangular, and do not create any relative angle between the straps and main body of the brassiere. The Hittel specification describes the fastener clasps only as "adjustment assemblies for adjustably securing the shoulder strap structure relative to the cups structure in a manner that is considered readily apparent to those skilled in

the art.” There is no mention of other fasteners, a suggestion that other fasteners could be used, or an indication that a fastener could serve to create a relative angle between the straps and the main body of the brassiere. Taken together or taken separately, the cited patents do not disclose or suggest the claimed present invention.

Likewise, there was no explicit or implicit teaching, suggestion, or motivation to combine Ophir and Hittel found in the knowledge generally available to one of ordinary skill in the art at the time the present invention was made. The Office Action states, without support, that it “would have been obvious to one having ordinary skill in the art at the time the invention was made” to combine Ophir and Hittel. However, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. MPEP 2143.01

Second, there is no reasonable expectation of success in combining Ophir and Hittel. That is, combining the two patents is not likely to produce the claimed present invention. It is not clear that the Ophir fastener could function as an adjustment assembly as recited in Hittel. Even if Ophir could function in this manner, it would not likely create the correct angle between the shoulder strap and the back panel of the claimed present invention.

Finally, the combined prior art references do not disclose or suggest the claim elements of claims 13 and 14. The Office Action states that “Ophir discloses the invention substantially as claimed.” However, Ophir does not disclose every element of the claim 13 and 14; a back panel and shoulder strap are not depicted at all, let alone depicted as being biased toward each other (as in claim 13) or away from each other (as in claim 14).

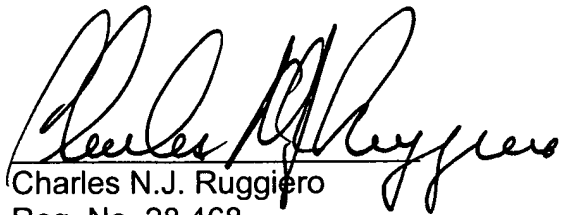
At the time the present invention was made, a person having ordinary skill in the art would not have made the combination suggested by the Office Action. Accordingly, claims 13 and 14 are patentable over Ophir in view of Hittel.

Applicant respectfully submits that claims 13 and 14 are patentable over the cited combination of references.

In view of the above, Applicant respectfully submits that all claims presented in this application are patentably distinguishable over the cited references and the cited combinations of the references. Accordingly, applicant respectfully requests favorable consideration and that this application be passed to allowance.

Respectfully submitted,

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